

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARK WAYNE CLARK,) CASE NO. C04-1647-JCC-MAT
)
Plaintiff,) ORDER DENYING PLAINTIFF'S
) MOTION FOR LEAVE TO CONDUCT
) MORE THAN TEN DEPOSITIONS;
) GRANTING IN PART DEFENDANTS'
v.) MOTION FOR PROTECTIVE ORDER;
) GRANTING PLAINTIFF'S MOTION
DEAN MASON, et al.,) FOR EXTENSION OF TIME
)
Defendants.)

Plaintiff filed this civil rights lawsuit two years ago, alleging that actions taken by 35 employees of the Washington Department of Corrections amounted to a “campaign of retaliation” against him. (Doc. #180 at 3). The case currently is in the discovery phase. Presently before the court are plaintiff’s motion to conduct more than ten depositions (Doc. #180), plaintiff’s motion to extend the discovery deadline by 60 days (Doc. #183), and defendants’ motion for a protective order (Doc. #185). Defendants have filed responses to plaintiff’s motions (Doc. #182, #184), and plaintiff, after receiving an extension of time from the court, filed a reply and a response (Docs. #188, #189). Having considered the motions and responses, and the balance of the record, the court does hereby find and ORDER as follows:

(1) Federal Rule of Civil Procedure 30(a)(2)(A) (“Rule 30(a)”) states, in pertinent part: “A party must obtain leave of court, which shall be granted to the extent consistent with the principles stated in Rule 26(b)(2), if . . . a proposed deposition would result in more than ten

01 depositions being taken under this rule or Rule 31” Fed. R. Civ. P. 30(a)(2)(A). Plaintiff
02 argues that he needs to exceed the ten deposition limit imposed by Rule 30(a) and be permitted
03 to conduct 25 more depositions, because the responses thus far by defendants to his discovery
04 requests have been evasive or incomplete. (Doc. #180 at 2). In addition, plaintiff asserts that
05 “[o]n the grounds of fairness, the Court should allow the Plaintiff to question each defendant he
06 believes are [sic] crucial to his need to prove that retaliation was in fact the motivating factor
07 behind the Defendants questionable actions” (*Id.* at 3).

08 In setting a presumptive limit of ten depositions, Rule 30(a) is designed to reduce litigation
09 costs by restricting the use of one of the more expensive forms of discovery. *See In Re At Home*
10 *Corp.*, 2005 WL 289976 at *3 (N.D. Cal. 2005). In considering whether to permit a party to
11 exceed the ten deposition limit, the court is directed by Rule 30(a) to the principles contained in
12 Rule 26(b)(2) (“Rule 26(b)”). Rule 26(b) states, in pertinent part, that discovery should be limited
13 if the court determines that:

- 14 (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable
15 from some other source that is more convenient, less burdensome, or less expensive;
- 16 (ii) the party seeking discovery has had ample opportunity by discovery in the action
17 to obtain the information sought; or
- 18 (iii) the burden or expense of the proposed discovery outweighs its likely benefit,
19 taking into account the needs of the case, the amount in controversy, the parties'
20 resources, the importance of the issues at stake in the litigation, and the importance
21 of the proposed discovery in resolving the issues.

22 Fed. R. Civ. P. 26(b)(2).

23 In addition, courts have held that a party seeking more than ten depositions must make a
24 particularized showing of why the additional discovery is necessary. *See, e.g., In re Air Crash at*
25 *Taipei*, 2003 U.S. Dist. LEXIS 23220 (C.D. Cal. 2003). Unless the movant can show a good

01 reason for exceeding the limit, leave to conduct more than 10 depositions should be denied. *See*
02 *Bell v. Fowler*, 99 F.3d 262, 272 (8th Cir. 1996).

03 Applying these principles to the matter at hand, the court finds that plaintiff fails to make
04 an adequate showing to justify exceeding the limit of ten depositions. First, plaintiff attempts to
05 make a particularized showing as to the need for additional depositions by listing each defendant
06 he seeks to depose accompanied by the reason justifying the proposed deposition. (Doc. #188 at
07 2-4). However, plaintiff's explanation for each proposed deposition consists only of the same
08 phrase repeated 22 times – that he needs to depose the particular person to establish the intent
09 behind their actions and to confront them about evasive answers to interrogatories. These
10 explanations consequently are not very compelling, nor does plaintiff offer anything to support his
11 own subjective view that defendants' answers to interrogatories have been evasive.

12 Second, plaintiff argues generally that conducting additional depositions would allow him
13 to ferret out the truth by confronting defendants with "documents, the logic of circumstances, and
14 surprise questions." (Doc. #188 at 8). Plaintiff dismisses defendants' suggestion that instead of
15 more depositions, plaintiff should file a motion to compel defendants to answer more responsively,
16 calling such a proposal "ridiculous[,] as that process would be quite daunting for the Defendants,
17 the Plaintiff, as well as the Court." (*Id.*) However, plaintiff ignores or minimizes the burden that
18 additional depositions would create for defendants, who would bear the complete costs of such
19 depositions as well as spend significant time scheduling and arranging for them. (*See, e.g.*, Doc.
20 #187, Attachments).

21 Therefore, the court finds that plaintiff's request to conduct an additional 25 depositions
22 is unreasonably cumulative and the burden of the additional depositions outweighs their likely

01 benefit. Accordingly, plaintiff's motion for leave to conduct more than ten depositions (Doc.
02 #180) is DENIED.

03 (3) Defendants seek a protective order under Fed. R. Civ. P. 30(b)(7) that would limit
04 plaintiff to conducting depositions telephonically, as opposed to in person. (Doc. #187). None
05 of the five defendants whom plaintiff seeks to depose in person live or work near the institution
06 where plaintiff is incarcerated. (Doc. #187 at 3). In addition, one defendant is in poor health.
07 (*Id.*, Exhibit 1, ¶9). Plaintiff argues, similar to his argument above, that he must depose these
08 defendants in person so that he can better assess their credibility and confront them if they answer
09 evasively. (Doc. #189 at 11).

10 While the court recognizes that in-person depositions have advantages over telephonic
11 depositions, given the burden on defendants to arrange, schedule, pay for, and travel to any in-
12 person depositions, the court hereby GRANTS in part defendants' motion for a protective order.
13 Plaintiff shall be permitted to conduct in-person depositions of the three defendants who are
14 employees of the Department of Corrections (Bustanoby, Carsrud, and Dahlbeck). The two
15 remaining defendants (Alstehdt and Leeberg) may be deposed telephonically.

16 (4) As stated in their response to plaintiff's motion for additional time to conduct
17 discovery, defendants do not object "to an extension of the discovery deadline for 60 days in order
18 to complete depositions in this matter." (Doc. #184 at 1). Therefore, plaintiff's motion for a 60-
19 day extension of time to complete discovery (Doc. #183) is GRANTED. The various deadlines
20 set forth in the court's previous scheduling Order (Doc. #179) are hereby extended by 60 days.

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01 (5) The Clerk is directed to send a copy of this Order to plaintiff, to counsel for
02 defendants, and to the Honorable John C. Coughenour.

03 DATED this 22nd day of August, 2006.

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05 
06 Mary Alice Theiler
07 United States Magistrate Judge
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